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MISCELLANEOUS RECONCILIATION ISSUES

PROPOSED BY THE ADMINISTRATION AND VARIOUS HOUSE COMMITTEES

RELATING TO

TAX TREATMENT OF OVERSEAS PRIVATE INVESTMENT CORPORATION,

EXCLUSIONS FOR CERTAIN OVERSEAS ALLOWANCES RECEIVED BY DEFENSE DEPARTMENT PERSONNEL,

NONRECOGNITION OF CAPITAL GAINS FOR DIVESTMENTS OF PROPERTY SUBJECT TO FEDERAL ETHICS REQUIREMENTS, AND

PETROLEUM TAX FOR OIL SPILL LIABILITY TRUST FUND

For Consideration

by the

COMMITTEE ON WAYS AND MEANS

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

June 20, 1989

JCX-25-89

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of miscellaneous reconciliation issues proposed by the Administration and various House Committees. The proposals relate to the following tax issues:

(1) A request from the Committee on Foreign Affairs relating to the tax treatment of the Overseas Private Investment Corporation (OPIC);

(2) An Administration proposal, identical to a request from the Select Committee on Intelligence, relating to the tax treatment of certain overseas allowances received by Defense Department personnel;

(3) An Administration proposal relating to the treatment of divestments of property subject to Federal ethics requirements; and

(4) Proposals of the Administration and the Committee on Merchant Marine and Fisheries relating to the petroleum tax for the Oil Spill Liability Trust Fund.

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[1] This document may be cited as follows: Joint Committee on Taxation, Miscellaneous Reconciliation Issues Proposed by the Administration and Various House Committees Relating to Tax Treatment of Overseas Private Investment Corporation, Exclusions for Certain Overseas Allowances Received by Defense Department Personnel, Nonrecognition of Capital Gains for Divestments of Property Subject to Federal Ethics Requirements, and Petroleum Tax for Oil Spill Liability Trust Fund (JCX-25-89), June 20, 1989.

DESCRIPTION OF PROPOSALS

1. Tax Treatment of Overseas Private Investment Corporation (OPIC)

Present Law

The Foreign Assistance Act of 1961 established the Overseas Private Investment Corporation (OPIC) as an agency of the United States under the foreign policy guidance of the Secretary of State. The purpose of OPIC is to facilitate the participation of United States private capital and skills in the economic development of less developed countries by conducting insurance, reinsurance, guarantee, and financing operations on a self-sustaining basis for OPIC-approved overseas investment projects of U.S. citizens.

The Foreign Assistance Act of 1961, as amended, specifically provides that OPIC is exempt from all Federal, State, and local taxes (22 U.S.C. sec. 2199(J)).

The International Cooperation Act of 1989, H.R. 2655 (favorably reported by the House Committee on Foreign Affairs on June 16, 1989, H. Rept. 101-90), would amend and recodify the Foreign Assistance Act of 1961, including the provisions governing OPIC, but would not specifically provide tax-exempt status for OPIC. After the recodification, OPIC would have tax-exempt status only if it is exempt from Federal income taxes under the Internal Revenue Code of 1986 without regard to any provision of law not contained in that Code and which is not contained in a revenue Act (sec. 501(c)(1)).

Description of Foreign Affairs Committee Proposal

The Internal Revenue Code would be amended to specifically provide that OPIC be exempt from all Federal taxes. This would codify the existing tax exemption in the Internal Revenue Code.

2. Exclusions for Certain Overseas Allowances Received by Defense Department Personnel

Present Law

State Department and Central Intelligence Agency (CIA) civilian officers and employees are exempt from tax on certain allowances and other items related to their overseas assignments (Code sec. 912(1)(A) and (B)). Benefits may include loans of household effects, health care, payment of certain work-related entertainment and representational expenses, and the payment of certain travel and related expenses of employees and their families, including expenses for travel and moving to and from assigned posts of duty, and travel for home leave, medical care, family visits, and the evacuation of families from dangerous foreign areas (22 U.S.C. secs. 4081-4086; 50 U.S.C. sec. 403e).

Beginning with Intelligence Authorization Acts for fiscal years 1982 and 1984 (Pub. Laws No. 97-89 and 98-215), the law has provided that comparable benefits could be given to civilian Defense Department employees assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States (10 U.S.C. sec. 1605) and to certain designated civilian and military Defense Department employees (generally National Security Agency personnel) assigned to special cryptologic activities outside the United States (section 9(b) of the National Security Agency Act of 1959, as amended (50 U.S.C. sec. 402 note)). The Code does not provide tax exemptions for these Defense Department employee benefits.

Administration Proposal

The Administration has transmitted for the consideration of the Congress a proposed "Intelligence Authorization Act for Fiscal Years 1990 and 1991." A section of the proposed bill would provide a tax exemption for those allowances and other items, comparable to the allowances and other items provided to civilian State Department and CIA employees, which are provided (under 10 U.S.C. sec. 1605 or sec. 9(b) of the National Security Agency Act of 1959, as amended) to civilian employees and officers of the Defense Department assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States, or to special cryptologic activities outside the United States, in cases where such allowances or other items would be exempt under current law if received by civilian State Department or CIA employees.

Select Committee on Intelligence Proposal (H.R. 1291)

Same as Administration proposal.

Effective Date

The proposal as set forth by the Administration and in H.R. 1291 has no express effective date. The proposal could be made effective for taxable years beginning after December 31, 1988.

3. Nonrecognition of Capital Gains for Divestments of Property Subject to Federal Ethics Requirements

Present Law

Generally gain or loss is recognized on any sale, exchange or other disposition of property. The Internal Revenue Code contains provisions under which taxpayers may elect not to recognize gain realized on the involuntary conversion of certain property if property similar or related in service or use to the property converted is acquired by the taxpayer within the replacement period (sec. 1033). In such a situation, gain is recognized only to the extent that the amount realized exceeds the cost of the replacement property. The basis of the replacement property will generally be the same as that of the converted property; however, proper adjustments must be made for (i) any money received and not spent to acquire replacement property, and (ii) any gain or loss not recognized.

Description of Administration Proposal[2]

The Administration's ethics proposal would require that employees and officers of the executive, congressional and judiciary branches of the U.S. government, as well as Members of Congress, be required to divest assets which may pose a conflict of interest. The proposal provides that if the proceeds of the sale of capital assets are reinvested in any capital asset within 60 days the sale will be treated as an involuntary conversion subject to nonrecognition of gain as under present law. Nonrecognition would be available only to those assets which the employee is specifically required to divest by the office designated with authority to determine conflicts of interest.

Effective Date

The proposal would apply to transfers after the date of enactment.

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[2] As contained in the President's ethics proposal submitted to the Congress.

4. Petroleum Tax for Oil Spill Liability Trust Fund

Present Law

Present law (Internal Revenue Code sec. 4611) establishes an excise tax at the rate of 1.3 cents per barrel on domestic crude oil and imported petroleum products (including imported crude oil) for the purpose of funding the Oil Spill Liability Trust Fund. However, the tax will not be imposed until the enactment of qualified authorizing legislation.[3] Although the tax itself was enacted in 1986, qualified authorizing legislation has never been enacted. Consequently, this tax has never been collected.

The tax on domestic crude oil would be imposed on the operator of any United States refinery receiving such crude oil, while the tax on imported petroleum products would be imposed on the person entering the product into the United States for consumption, use, or warehousing. If domestic crude oil were used in, or exported from, the United States before imposition of the petroleum tax, the tax would be imposed on the user or exporter of the oil.

Repayable advances could be made to the Trust Fund from the general fund in a maximum outstanding amount of $500 million. The maximum amount which could be paid from the Trust Fund for any single incident is $500 million, no more than $250 million of which could be used to pay for natural resource damage claims (sec. 9509(c)).

The Oil Spill Liability Trust Fund excise tax is scheduled to expire on December 31, 1991. The tax will terminate earlier than that date if the Secretary of the Treasury determines that $300 million has been credited to the Oil Spill Liability Trust Fund before January 1, 1992.

Administration Proposal

The Administration bill (H.R. 2325) amends the present-law Oil Spill Liability Trust Fund excise tax by imposing the tax commencing on the first day of the first month beginning more than 30 days after the date of enactment. The bill also extends the expiration date of the tax from December 31, 1991, to June 30, 1994. As under present law, the tax will terminate earlier than that date if

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[3] The Code requires that the authorizing legislation must be substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed the House of Representatives.

the Secretary of the Treasury determines that the amount of taxes credited equals $300 million.

The bill modifies the limitations on expenditures from the Trust Fund to permit the President to waive the present-law expenditure limit of $500 million per incident. The bill also would remove the present-law expenditure limit of $250 million on payments for natural resource damages.

Proposal of the Committee on Merchant Marine and Fisheries[4]

The proposal of the Committee on Merchant Marine and Fisheries would modify present law to impose a tax rate of 2.0 cents per barrel whenever the Trust Fund balance is less than $250 million or whenever a repayable advance is outstanding. The proposal would increase the ceiling on collections from $300 million to $500 million. The tax would be automatically reinstated at the rate of 1.3 cents per barrel whenever the Trust Fund balance falls below $500 million.

In addition, the proposal would increase the per-incident expenditure limit from $500 million to $1 billion. The proposal also would authorize borrowings of up to $1 billion to meet the purposes of the Trust Fund.

Other Possible Option

Another option would be to modify present law to impose the tax without the required authorizing legislation and to extend collection of the tax through December 31, 1992. Collection of the tax would commence on October 1, 1989.

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[4] As communicated to Chairman Rostenkowski in a letter dated June 5, 1989, from Chairman Jones of the Committee on Merchant Marine and Fisheries and Chairman Tauzin of the Subcommittee on Coast Guard and Navigation. Full Committee mark-up of H.R. 1465, as reported by the Subcommittee on Coast Guard and Navigation, is scheduled for June 21, 1989.